



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 25, 2004

Mr. Lance Beversdorff
Staff Attorney
Texas Youth Commission
P. O. Box 4260
Austin, Texas 78765

OR2004-1387

Dear Mr. Beversdorff:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 196199.

The Texas Youth Commission (the "commission") received a request for certain incident reports involving commission staff and students "on the AMP unit." You claim that the requested information is excepted from disclosure pursuant to section 552.101 of the Government Code. We have considered the exception you claim and have reviewed the submitted information.

You claim that the entirety of the submitted information is excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with section 61.073 of the Human Resources Code.¹ Section 61.073 provides:

The commission shall keep written records of all examinations and conclusions based on them and of all orders concerning the disposition or treatment of each child subject to its control. Except as provided by Section 61.093(c), these records and all other information concerning a child, including personally identifiable information, are not public and are available

¹ Section 552.101 of the Government Code excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. *See* Gov't Code § 552.101. Section 552.101 encompasses information that is protected from disclosure by other statutes.

only according to the provisions of Section 58.005, Family Code, Section 61.0731, Human Resources Code, and Chapter 61, Code of Criminal Procedure.

Hum. Res. Code § 61.073. Section 61.093(c) of the Human Resources Code provides for disclosure of information relating to a child who has escaped from custody. *See id.* § 61.093(c). Section 61.0731 provides for release of certain information concerning a child to the child and the child's parent or guardian, or to a person having a legitimate need for the information, in certain circumstances. *See id.* § 61.0731. Section 58.005(a) of the Family Code provides that "[i]nformation obtained for the purpose of diagnosis, examination, evaluation, or treatment . . . of a child by [an agency] providing supervision of a child by arrangement of the juvenile court or having custody of the child under order of the juvenile court" may be disclosed only to certain specified persons or under certain specified circumstances. *See* Fam. Code § 58.005(a). Chapter 61 of the Code of Criminal Procedure governs information pertaining to criminal combinations and criminal street gangs. *See* Crim. Proc. Code art. 61.04 (criminal information relating to child).

You state that the submitted information constitutes documents of conduct of identifiable youths who have been committed to the care and custody of the commission. You also state that this information is kept in the respective youth's master file and is compiled as a record of the youth's progress towards resocialization and need for additional treatment. Finally, you state that the requestor has not demonstrated that he is a person entitled to access to this information under any of the exceptions enumerated above. Based on your representations and our review of the submitted information, we find that this information is encompassed by section 61.073. Accordingly, we conclude that the submitted information is excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with section 61.073 of the Human Resources Code.²

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the

² Because we base our ruling on section 552.101 of the Government Code in conjunction with section 61.073 of the Human Resources Code, we need not address your remaining argument.

governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

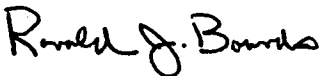
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Ronald J. Bounds
Assistant Attorney General
Open Records Division

RJB/lmt

Ref: ID# 196199

Enc. Submitted documents

cc: Mr. Charles E. Davis
6706 Tennyson
Waco, Texas 76710
(w/o enclosures)